

No. 87-1875
In The
Supreme Court Of The United States

Supreme Court, U.
FILED
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U.S. DEPT. OF JUSTICE

OCTOBER TERM, 1987

OTIS L. LEE,

Petitioner,

v.

ALBEMARLE COUNTY SCHOOL
BOARD, et. al.,

Respondents.

BRIEF IN OPPOSITION TO THE
PETITION FOR WRIT OF CERTIORARI

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Petitioner Lee contends that the Fourth Circuit Court of Appeals erred in holding that a routine personnel decision, reached after an extensive hearing process, was legally permissible. This case presents nothing more than an employment contract dispute between an employee and a public employer, not meriting this Court's exercise of its judicial discretion of review.

Statement of the Case

The unanimous decision of the Albemarle County, Virginia, School Board (School Board) to terminate the Petitioner's employment was reached after an extensive, state-law prescribed dismissal process. The Petitioner elected a hearing before a



fact-finding panel which recommended the dismissal of the Petitioner to the School Board.

The fact-finding panel hearing consumed four days and resulted in 800 pages of hearing transcript and 50 exhibits. At the hearing, Petitioner Lee was represented by two attorneys and had not only the opportunity to cross-examine witnesses but to call witnesses on his own behalf in response to the evidence supporting dismissal. Many of the chief hearing witnesses against the Petitioner also are Black.

Prior to the hearing before the fact-finding panel, the Petitioner and his counsel were given detailed written notice by the School Superintendent of the grounds for the recom-

mentation of dismissal to the School Board. The gravamina of the dismissal action were as follows: Lee, as Chairman of the Special Task Force for Minority Hiring, allowed a young, newly recruited Black teacher to believe that her job somehow was tied to rental of one of Lee's numerous apartments; on many occasions, unlike any other School Board employee, Lee conducted his private, extensive landlord business during school hours; and Lee, as Chairman of the Special Task Force for Minority Hiring, improperly discharged his duties by giving preferential hiring consideration to a minority teaching applicant who clearly was unqualified for the job and who owed money to Lee. The extended fact-finding panel hearing resulted in evidence

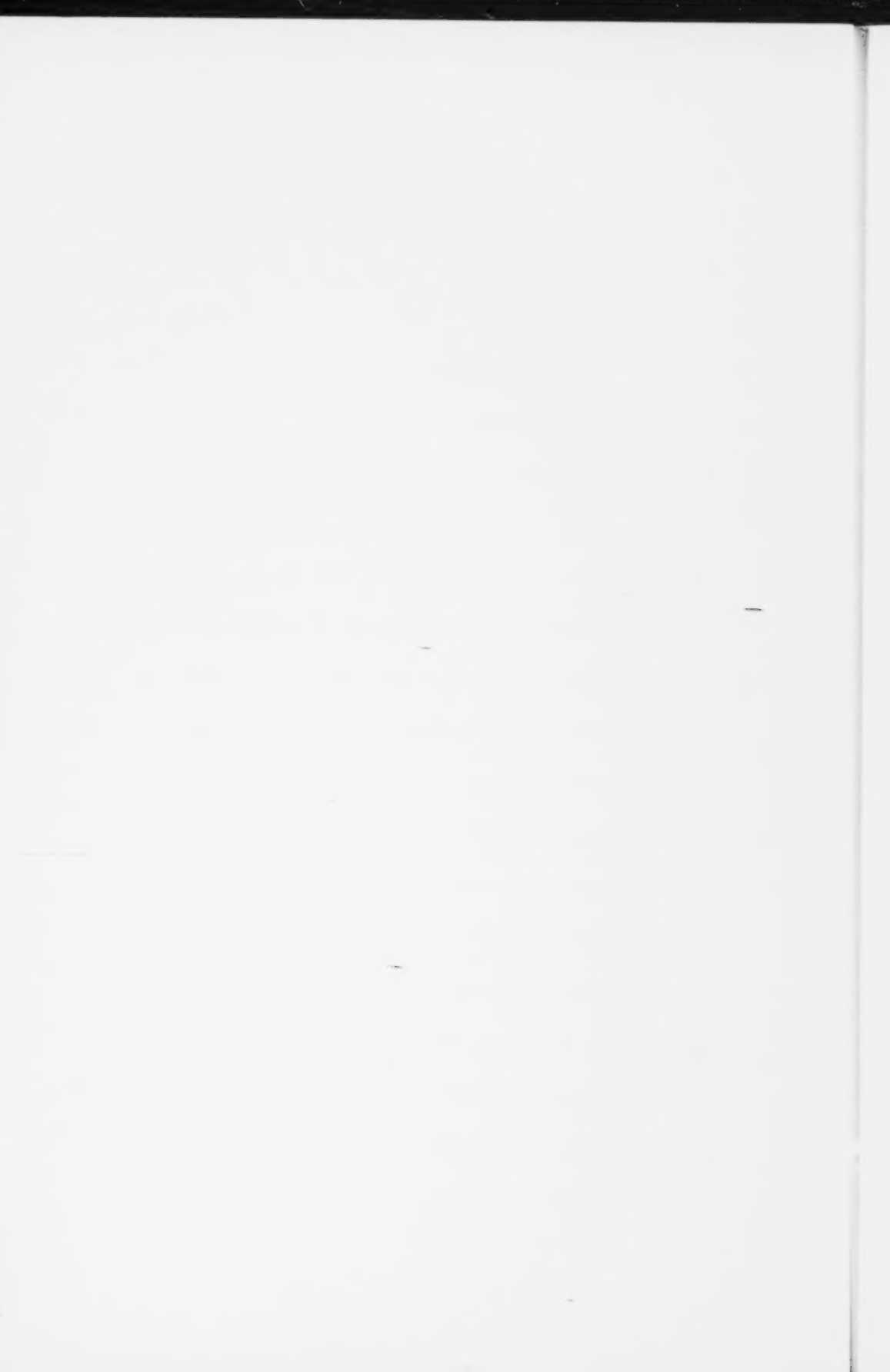


supporting all of these allegations and others.

Argument

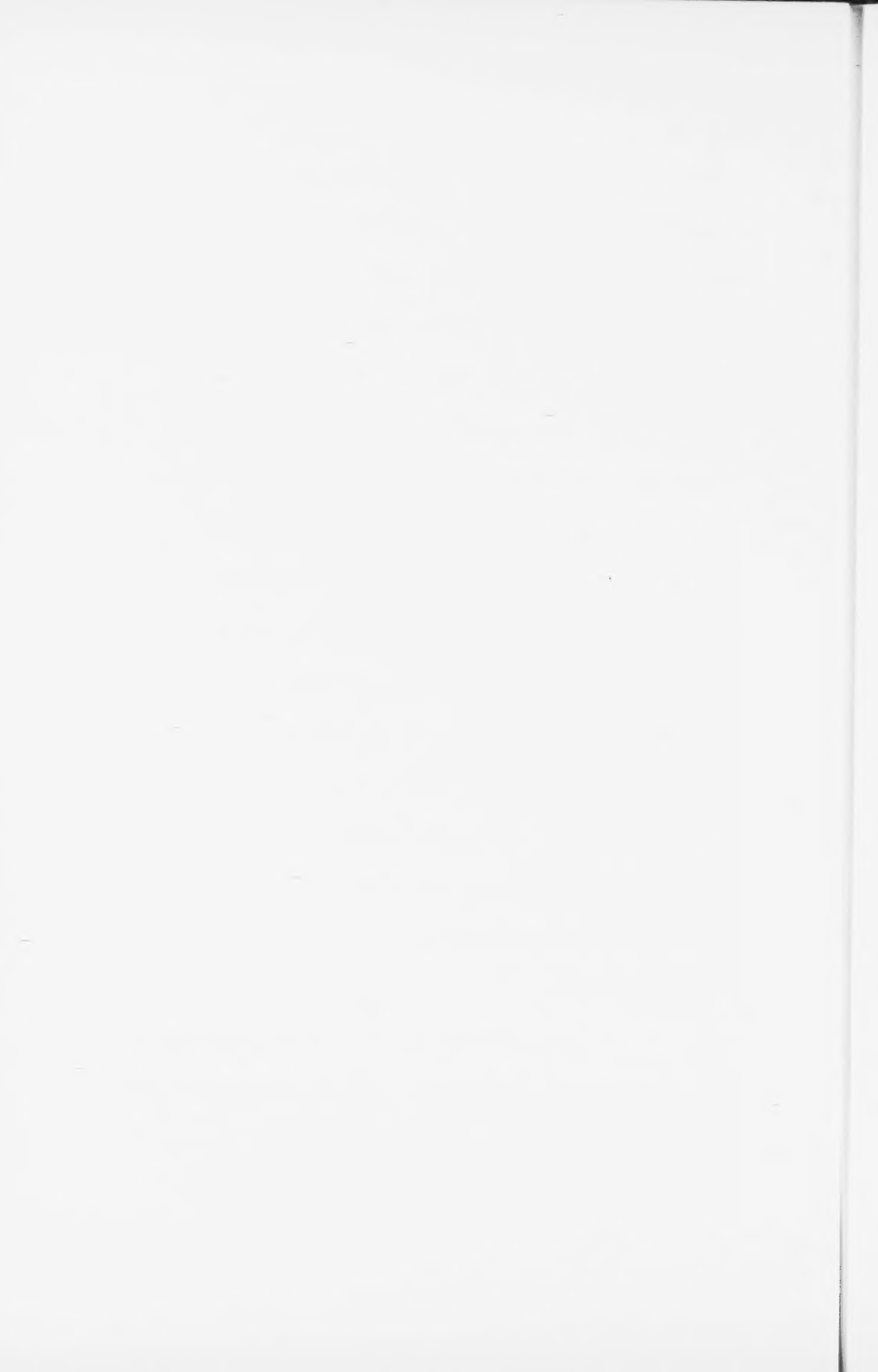
The Petitioner provides no special and important reason, as recognized by this Court, to grant certiorari in this case. See Rule 17. The Petitioner's arguments merely restate those made in the district court, which granted summary judgment, and in the circuit court, which concluded in a per curiam decision that the arguments were "utterly without merit" (Pet. App. 8-9).

Petitioner has had his case examined by no less than four tribunals, all of which have sustained his dismissal. He has received procedural due process for both property



and liberty interests, Perry v. Sindermann, 408 U.S. 593, 603 (1972) and substantive due process, Wood v. Strickland, 420 U.S. 308, 326 (1975). As the district court noted in its opinion, the administrative hearing before the fact-finding panel consumed four days and "the record [from 24 witnesses and 50 exhibits] clearly establishes that Mr. Lee regularly conducted his personal business on county time, that he mixed his private business affairs with his public duties, and that he made some improper hiring decisions as Chairman of the Minority Task Force" (Pet. App. 27-28).

Contrary to the Petitioner's contention, neither the district court nor the circuit court reached the



issue of immunity. It was not necessary, because the Petitioner failed to establish a constitutional violation (Pet. App. 20).

As to Petitioner's claim of racial discrimination, it is noteworthy that five of the named individual defendants are Black, including School Board member Feggans and fact-finding panel member May. The claim of racial discrimination was grounded upon an allegation of discriminatory discipline. The Fourth Circuit Court of Appeals correctly noted that "[t]here is no evidence in the record to support a prima facie case of discrimination" (Pet. App. 8- 9). Bare allegations of racial discrimination are not enough to survive a properly supported motion for summary judgment.

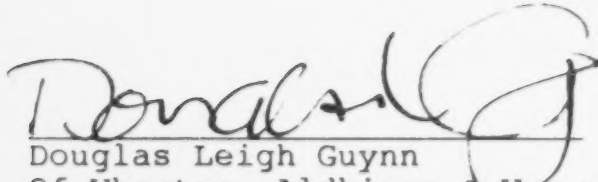


See Anderson v. Liberty Lobby, Inc.,
106 S.Ct. 2505 (1986); General
Building Contractors Assoc., Inc. v.
Pennsylvania, 458 U.S. 375 (1982).

Conclusion

It is therefore respectfully
submitted that the petition for a writ
of certiorari should be denied.

ALBEMARLE COUNTY
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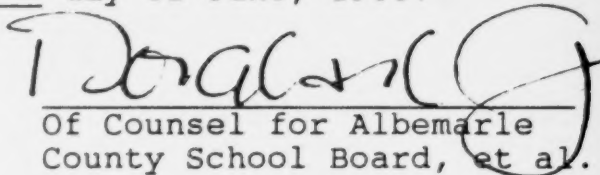
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Certificate of Service

I certify that three copies of the foregoing Brief in Opposition was mailed first class, postage prepaid to J. Benjamin Dick, Esquire, 421 Park Street, Suite 2, Charlottesville, Virginia 22901, counsel for the Petitioner, this 7th day of June, 1988.



Of Counsel for Albemarle
County School Board, et al.